

INSTRUCTION NO. ____

Preliminary Instructions to Jury

Members of the jury, the order of the trial of this case will be in four stages:

1. Opening statements
2. Presentation of the evidence
3. Instructions of law
4. Final argument

After the conclusion of final argument, you will be further instructed concerning your deliberations, after which you will retire, select a leader, deliberate, and arrive at your verdict.

Opening Statements

First, the plaintiff's attorney may make an opening statement outlining his or her case. Then the defendant's attorney also may make an opening statement. Neither side is required to do so.

Presentation of the Evidence

Following the opening statements, the plaintiff will introduce evidence, after which the defendant then has the right to introduce evidence (but is not required to do so). Rebuttal evidence may then be introduced if appropriate.

Instructions of Law

Third, at the conclusion of all evidence, the court will instruct you on the law which is to be applied to this case.

Final Argument

Once the evidence has been presented and you have been instructed on the

law, then the attorneys may make their closing arguments. The plaintiff's attorney may reply, and the plaintiff's attorney may close in rebuttal.

Members of the jury, your function in the trial of this case is to reach a unanimous verdict that is based solely on the evidence and the instructions of law which you will be given after all the evidence has been presented. The law applicable to this case is given to you in these instructions and in the other instructions you will receive at the close of all evidence, and it is your duty to follow all such instructions.

No statement or ruling or remark that I may make during the course of the trial is intended to indicate my opinion as to what the facts are. It is the function of the jury to consider the evidence and determine the facts in this case.

The evidence which you are to consider consists of testimony of witnesses, any exhibits admitted into evidence, and any facts agreed upon between the parties and presented to you in the form of a stipulation. The admission of evidence in court is governed by rules of law; and from time to time, it may be the duty of the attorneys to make objections and my duty as judge to rule on those objections and decide whether or not you can consider testimony or exhibits to which an objection was sustained or which has been ordered stricken. If an objection is overruled, then you may consider that evidence together with all other evidence in the case. The opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and in applying the law, but their statements are not evidence.

In your determination of what the facts are, you alone must determine the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their

opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case. You should not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper. You should use your common sense in considering the evidence; but in doing so, you should not indulge in guesswork or speculation. From consideration of these things and all the other circumstances of the case, you should determine which witnesses are more believable and weigh their testimony accordingly. Until this case is submitted to you for your deliberations, you should not decide any issue in the case and you should not discuss the case with anyone or remain within hearing of anyone who is discussing it. There will be occasional recesses during the trial. During the recesses, you should not discuss the case with your fellow jurors nor go to the scene or make any independent investigation or receive any information about the case from radio, television, or the newspapers. Once your deliberations commence, then you must discuss the case only in the jury room when all the members of the jury are present.

Just prior to your deliberations, you will be given a final instruction with regard to your selection of a leader, the conduct of your deliberations, and the forms for your verdict.

The faithful and proper performance by you of your duty is vital to the administration of justice. On behalf of the court and the litigants, we appreciate your giving your complete attention to the case as it is presented.

Thank you.

Virginia Model Jury Instructions, Instruction No. 2.000.

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You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

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The plaintiff called the defendants as an adverse witness. The plaintiff is bound by as much of the defendants' testimony given as an adverse witness as is clear, logical, reasonable and uncontradicted.

The plaintiff is not bound by any of the defendants' testimony given as an adverse witness that conflicts with any of the other evidence in the case.

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In considering the weight to be given to the testimony of an expert witness, you should consider the basis for his opinion and the manner by which he arrived at it and the underlying facts and data upon which he relied.

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When one of the parties testifies unequivocally to facts within his own knowledge, those statements of fact and the necessary inferences from them are binding upon him. He cannot rely on other evidence in conflict with his own testimony to strengthen his case.

However, you must consider his testimony as a whole, and you must consider a statement made in one part of his testimony in the light of any explanation or clarification made elsewhere in his testimony.

INSTRUCTION NO. ____

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

INSTRUCTION NO. ____

If you believe from the evidence that a witness previously made a statement inconsistent with his or her testimony at this trial, the only purpose for which the statement may be considered by you is its bearing on the witness's credibility. It is not evidence that what the witness previously said is true.

INSTRUCTION NO. ____

If you believe from the evidence that a party previously made a statement inconsistent with his or her testimony at this trial, that previous statement may be considered by you as evidence that what the party previously said was true.

INSTRUCTION NO. _____

You must not consider any matter that was rejected or stricken by the Court. It is not evidence and should be disregarded.

INSTRUCTION NO. _____

The amount sued for is not evidence in this case; you should not consider it as evidence in arriving at your verdict.

INSTRUCTION NO. ____

The defendants have admitted that they are liable for any injury the plaintiff received from the accident. Therefore, the only issue that you have to decide is the amount of damages, if any, the plaintiff is entitled to recover.

An admission of liability should not influence you in any way in considering the issue of damages.

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Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in this case are:

- (1) Were the defendants, Hersie Tyson and MCH Transportation, Inc., negligent?
- 2) If they were negligent, was their negligence a proximate cause of the accident?

On these issues the plaintiff has the burden of proof.

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- (3) Was the plaintiff, Tyrome Lott, negligent?
 - (4) If he was negligent, was his negligence a proximate cause of the accident?

On these issues the defendants have the burden of proof.

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- (5) If the plaintiff is entitled to recover, what is the amount of his damages?

On this issue the plaintiff has the burden of proof.

Your decision on these issues must be governed by the instructions that follow.

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You shall find your verdict for the plaintiff if he has proved by the greater weight of the evidence that:

- (1) the defendants were negligent; and that
- (2) the defendants' negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the defendants if:

- (1) the plaintiff failed to prove either or both of the two elements above; or if
- (2) you find by the greater weight of the evidence that the plaintiff was contributorily negligent and that his contributory negligence was a proximate cause of the accident.

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The greater weight of all the evidence is sometimes called the preponderance of the evidence. It is that evidence which you find more persuasive. The testimony of one witness whom you believe can be the greater weight of the evidence.

INSTRUCTION NO. ____

Negligence is the failure to use ordinary care. Ordinary care is the care a reasonable person would have used under the circumstances of this case.

INSTRUCTION NO. ____

The plaintiff has the burden of proving by the greater weight of the evidence that the defendants were negligent and that the defendants' negligence proximately caused the accident and any of the injuries to the plaintiff.

INSTRUCTION NO. ____

The fact that there was an accident and that the plaintiff was injured does not, of itself, entitle the plaintiff to recover.

INSTRUCTION NO. ____

A proximate cause of an accident, injury, or damage is a cause which in natural and continuous sequence produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

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Contributory negligence is the failure to act as a reasonable person would have acted for his own safety under the circumstances of this case.

INSTRUCTION NO. ____

When the defendants claim contributory negligence as a defense, they have the burden of proving by the greater weight of the evidence that the plaintiff was negligent and that this negligence was a proximate cause of the plaintiff's injuries. Contributory negligence may be shown by the defendants' evidence or by the plaintiff's evidence.

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If you find from the greater weight of the evidence that both the plaintiff and the defendants were negligent and that their negligence proximately contributed to the accident, you may not compare the negligence of the parties. Any negligence of the plaintiff which was a proximate cause of the accident will bar the plaintiff from recovering.

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The plaintiff has a right to assume that the defendants will use ordinary care until he realizes, or in the exercise of ordinary care should realize, that the defendants are not going to do so.

INSTRUCTION NO. ____

If you find by the greater weight of the evidence that the plaintiff fully understood the nature and extent of a known danger, and if he voluntarily exposed himself to it, he assumed the risk of injuring himself from that danger. The plaintiff cannot recover for injuries that proximately resulted from assuming the risk of a known danger.

INSTRUCTION NO. _____

Where the defendants claim assumption of the risk as a defense, it has the burden of proving by the greater weight of the evidence that the plaintiff fully appreciated the nature and the extent of a known danger; that the plaintiff voluntarily exposed himself to it; and that the plaintiff was injured as a result of the danger assumed. Assumption of the risk may be shown by the defendants' evidence or by the plaintiff's evidence.

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If you find your verdict for the plaintiff, then in determining the damages to which he is entitled, you may consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendants:

- (1) any bodily injuries he sustained and their effect on his health according to their degree and probable duration;
- (2) any physical pain and mental anguish he suffered in the past and any that he may be reasonably expected to suffer in the future;
- (3) any disfigurement or deformity and any associated humiliation or embarrassment;
- (4) any inconvenience caused in the past and any that probably will be caused in the future;
- (5) any medical expenses incurred in the past and any that may be reasonably expected to occur in the future;
- (6) any earnings he lost because he was unable to work at her calling;
- (7) any loss of earnings and lessening of earning capacity, or either, that he may reasonably be expected to sustain in the future;
- (8) any property damage he sustained.

Your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of the defendants' negligence.

INSTRUCTION NO. ____

The burden is on the plaintiff to prove by the greater weight of the evidence each item of damage he claims and to prove that each item was caused by the defendants' negligence. He is not required to prove the exact amount of his damages, but he must show sufficient facts and circumstances to permit you to make a reasonable estimate of each item. If the plaintiff fails to do so, then he cannot recover for that item.

INSTRUCTION NO. ____

The plaintiff has a duty to minimize his damages. If you find that the plaintiff did not act reasonably to minimize his damages and that, as a result, they increased, then he cannot recover the amount by which they increased.

INSTRUCTION NO. ____

The driver of a vehicle has a duty to drive as nearly as practicable within a single lane and not to move from that lane until he has used ordinary care to see that the movement can be made with safety.

If a driver fails to perform this duty, then he is negligent.

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The driver of a vehicle overtaking and passing another vehicle proceeding in the same direction has a duty not to drive to the left side of the roadway unless such left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

If a driver fails to perform this duty, then he is negligent.

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The duty to keep a proper lookout requires a driver to use ordinary care to look in all directions for vehicles, persons or conditions that would affect his driving, to see what a reasonable person would have seen, and to react as a reasonable person would have acted to avoid a collision under the circumstances.